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it does not. The Judicial Commissioner on appeal arrived at the same result, that the lease was good, by a different process of reasoning, for he held that there were various things, by estoppel and otherwise, which prevented the plaintiff from setting aside an invalid lease. Their Lordships would require a good deal more thought and consideration than has yet been given to the case before they pronounced an opinion upon such a point as that; but if it be correct to say, as their Lordships are decidedly of opinion that it is, that the Court of Wards could grant such a lease as this, and that it was not impeachable merely because it exceeded five years in length, no other objection being made, this lease is good and nothing further arises upon it. The lease was not void and could not be set aside, and consequently it stands. If there were other objections than this they have not been raised. Their Lordships do not suppose there are any, and they therefore think that the judgment appealed from should be affirmed, although not for the same reasons by any means that were given below.

Their Lordships will therefore humbly advise Her Majesty that the judgment appealed from should be affirmed, and this appeal dismissed with costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitors for the respondent: Messrs. *Sanderson & Holland.*

C. B.

APPELLATE CIVIL.

Before Mr. Justice Wilson and Mr. Justice O'Kinealy.

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March 4.

HURROSUNDARI DABI (PLAINTIFF) *v.* BHOJOHARI DAS MANJI (DEFENDANT).*

Second Appeal—Appeal to the High Court—General Clauses Act (I of 1868), s. 6—Effect of Repeal—Proceedings—Bengal Rent Act (VIII of 1885), s. 5.

The words "any proceedings commenced before the repealing Act shall have come into operation" in s. 6 of the General Clauses Act (I of 1868).

*Appeal from Appellate Decree No. 2292 of 1885, against the decree of S. H. C. Tayler, Esq., Judge of Burdwan, dated the 28th of July 1885, affirming the decree of Baboo Nilmoni Das, Munsiff of Raneegunge, dated the 28th of January 1885.

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include an appeal against a decree made before the passing of the repealing Act, as such appeal must be considered a proceeding in the original suit.

In a suit between landlord and tenant a decree was passed by the lower Appellate Court on the 28th of July 1885. Under the provisions of the Act then in force, namely, Beng. Act VIII of 1869, s. 102, a second appeal to the High Court was prohibited. That Act was repealed by Act VIII of 1885, which came into force on the 1st of November 1885, this latter Act allowing an appeal to the High Court in suits similar to the one in question. A second appeal to the High Court in that suit was filed on the 18th of November 1885.

Held, that no appeal lay.

THIS was a suit for arrears of rent at an enhanced rate. The sum claimed was Rs. 24-7-6, being the rent of the year 1290 (1883-84). The plaint stated that the defendant was one of the plaintiff's ryots; that the plaintiff had remeasured the defendant's holding and found that he held more land than he was entitled to; that thereupon the defendant's rent was increased in proportion, the rate per beegah being settled by the defendant who caused his agent to sign on his behalf the jamabandi which was prepared on the occasion. The defendant, by his written statement, denied that he had agreed to pay the increased rent, and also denied that he had authorised any one to sign the jamabandi on his behalf. Both the lower Courts found in favour of the defendant, and gave a decree for the amount admitted by him.

The plaintiff appealed to the High Court, on the ground that the Courts below should have found what excess lands were held by the defendant, and should have given a decree for the rent of the excess which might, on investigation, be found in the plaintiff's possession. The suit was instituted on the 30th July 1884. The decree of the Court of first instance bore date the 20th January 1885, and that of the lower Appellate Court was dated the 28th July 1885. The grounds of appeal to the High Court were filed on the 18th of November 1885, on the opening of the Court after the Dusserah vacation. At the hearing of the appeal the pleader for the respondent objected that the case was governed by the provisions of Beng. Act VIII of 1869, and not by those of the new Rent Act, VIII of 1885, which came into force on the 1st of November, 1885, and that therefore no appeal lay to the High Court.

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Baboo *Jagat Chunder Banerji*, for the appellant.

Baboo *Taruck Nath Sen*, for the respondent.

The judgment of the Court (WILSON and O'KINEALY, JJ.) was delivered by

WILSON, J.—The question raised in this case is, whether an appeal lies.

The decree appealed against was a rent decree of such a character that under s. 102 of the old Beng. Rent Act (VIII of 1869) no second appeal would lie to this Court. After the date of that decree the new Rent Act (VIII of 1885) was passed, and that Act repealed s. 102 of Act VIII of 1869, and substituted other provisions on the subject. And we may take it, for the purpose of the present point, that those provisions are such that the present appeal would not be excluded by them. The question whether this appeal lies or not depends on the construction of s. 6 of the General Clauses Act (I of 1868). That section says: "The repeal of any Statute, Act, or Regulation shall not affect anything done, or any offence committed, or any fine or penalty incurred, or *any proceedings commenced before the repealing Act shall have come into operation.*" The question is whether the words, "any proceedings *commenced before the repealing Act shall have come into operation,*" include an appeal against a decree made before the passing of the repealing Act. If they do, the repealing Act cannot give an appeal in this case. We think that there is clear authority for saying that the word "proceedings" in s. 6 of the General Clauses Act does include an appeal.

In the case of *Mungal Pershad Dichit* v. *Girja Kant Lahiri* (1) a very similar question was before their Lordships in the Privy Council with regard to the construction of the Limitation Act (IX of 1871). By s. 1 of that Act nothing contained in certain portions of the Act was to apply to suits instituted before the 1st of April 1873; and it was held by their Lordships that applications for execution in suits instituted before the passing of that Act fell within those terms. Their Lordships said: "It appears to their Lordships that a thing which applies to an application

(1) I. L. R., 8 Calc., 51.

in a suit applies to the suit, and that an application for the execution of a decree is an application in the suit in which the decree was obtained." If an application for the execution of a decree in a suit is a proceeding in the suit, it would seem to follow that an appeal is also a proceeding in the suit; and the word "proceeding" appears to be quite as wide a word as "suit." But on the point before us there are no less than three direct decisions.

In the case of *Ratan Chand Shrichand* v. *Hanmantrav Shivbakas* (1), the question was raised in this way: There was an Act in force under which an appeal was given in certain cases. That Act was repealed, and on the date on which it was repealed the decree in question then had already been passed, but no appeal had been filed, and the question was, whether on the construction of s. 6 of the General Clauses Act, the word "proceedings" in that section included an appeal, and whether therefore the appeal lay. The Court held that an appeal was a part of the "proceedings," and therefore was not affected by the repealing Act.

The same view was taken by two Judges, Sir R. Garth, C.J., and Jackson, J., in a Full Bench of this Court, in *Runjit Singh* v. *Meherban Koer* (2). And the same view was also taken by a Full Bench of the Allahabad High Court in the case of *Thakur Pershad* v. *Ashan Ali* (3).

These cases are on all fours with the present case, with this exception, that there an appeal was given under the repealed Act, and it was held that the repealing Act did not take away the appeal. Here the repealed Act excluded an appeal. It follows, on the same principle, that the repealing Act cannot give an appeal.

We hold therefore that no appeal lies in this case.

The appeal is dismissed with costs.

Appeal dismissed.

P. O'K.

(1) 6 Bom. H. C., 166. (2) I. L. R., 3 Calc., 662.
(3) I. L. R., 1 All., 668.